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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,761	12/31/2003	Paul T. Van Gompel	20,240	9121
23556	7590	03/15/2006		
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956				
			EXAMINER CHAPMAN, GINGER T	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/749,761	Applicant(s) VAN GOMPEL ET AL.	
	Examiner Ginger T. Chapman	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-46 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments, see p. 3, lines 1-3, filed 2 December 2005, with respect to claims 1, 16, 17, and 31 have been fully considered and are persuasive. The rejection of claims 1-46 has been withdrawn.

Election/Restrictions

This application contains claims directed to the following patentably distinct species:

- Species 1. a disposable garment comprising: an outer layer, an elastic inner layer including a front piece and a back piece that are elastic in the lateral direction attached to a crotch piece elastic in the longitudinal direction and having an opening, as per claims 1-15;
- Species 2. a disposable garment comprising a liquid impermeable outer layer, an elastic inner layer including a front piece and a back piece elastic in the lateral direction attached to a crotch piece elastic in the longitudinal direction and extensible in the lateral direction and having an opening where the opening has a length of from 10 % to 80 % of a total length of the garment, and the inner and outer layers are bonded together using a plurality of ultrasonic bonds, and the garment has a longitudinal side edge having bonded area where the perimeter bonded area has a percentage of bonded area to unbonded area of from 20 % to 40 %, as per claim 16;

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Species 3. a disposable garment comprising: a stretchable outer layer, an elastic inner layer including a front piece and a back piece that are elastic in the lateral direction attached to a crotch piece that is elastic in the longitudinal direction and having an opening and the elastic inner layer is bonded to the stretchable outer layer and the crotch piece has a crotch piece retraction value and the stretchable outer layer has an stretchable outer layer retraction value and the stretchable outer layer retraction value is less than the crotch piece retraction value, as per claims 17-30;

Species 4. an absorbent disposable garment comprising: an outer layer bonded to an elastic inner layer including a front piece and a back piece elastic in the lateral direction attached to a crotch piece elastic in the longitudinal direction and having an opening, and an absorbent assembly positioned between the outer layer and the elastic inner layer wherein the absorbent assembly includes a topsheet layer and a core layer and a barrier layer, as per claims 31-46.

The species are independent or distinct because, by way of example, species 4 requires “an absorbent assembly positioned between the outer layer and the elastic inner layer wherein the absorbent assembly includes a topsheet layer and a core layer and a barrier layer” because these limitations are not required for species 1 the searches are not coextensive and additional search would of necessity be required.

A telephone call was made to Mr. David Arteman on 8 March 2006 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 8:30 a.m. to 5:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ginger Chapman
Examiner, Art Unit 3761
03/09/06



TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

